

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)**

Michael Star,)
Plaintiff,)
v.) Case No. _____
Michael Armellino, DBA)
Bilbo Baggins Restaurant,)
Defendant.)

)

NOTICE OF REMOVAL

Bilbo Baggins Restaurant (“Baggins”), by counsel and pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, files this Notice of Removal of a civil action from the City of Alexandria Circuit Court, Virginia, and in support, states the following grounds for removal:

1. On or about November 14, 2018, Plaintiff Michael Star filed a Complaint in the City of Alexandria Circuit Court, Virginia (Case No. CL18003305) against Baggins. In accordance with 28 U.S.C. § 1446(a), a true and correct copy of all process, pleadings, documents, and orders of which Baggins is aware is attached as Exhibit 1.
2. Baggins’s time to respond to the Summons and Complaint by responsive pleading has not yet expired.
3. This Notice is timely. Pursuant to 28 U.S.C. § 1446(b), “[t]he notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on

the defendant, whichever period is shorter." *See Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999).

4. Counsel for Bilbo Baggins received the Complaint on November 23, 2018. Thus, this Notice of Removal has been timely filed within the prescribed thirty-day limit.

5. Bilbo Baggins submits this Notice without waiving any defenses to the claims asserted by Plaintiff or conceding that Plaintiff has pled claims upon which relief can be granted or exhausted all remedies available to Plaintiff.

6. Removal of this case is proper under 28 U.S.C. § 1441(a), which provides in part that "any civil action brought in a State court of which the district courts of the United States have original jurisdiction may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending."

7. The City of Alexandria Circuit Court, Virginia is located within this District. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1441(a).

8. Federal Question Jurisdiction: The civil action is within the original jurisdiction of this Court based upon federal question jurisdiction pursuant to 28 U.S.C. § 1331. Plaintiff asserts that Baggins violated Title VII of the Civil Rights Act of 1964 by terminating his employment for harassment with retaliation. Plaintiff also asserts that Baggins violated the Americans with Disabilities Act of 1990, by refusing to accommodate. Accordingly, this Court has original jurisdiction over Plaintiff's claim pursuant to 28 U.S.C. § 1331 because his claim arises under Federal Law. The Supreme Court has found that a "suit arises under the law that creates the cause of action," *American Well Works v. Layne*, 241 US 257 (1916), and therefore, only suits based on federal law, not state law suits, are most likely to create federal question jurisdiction, *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149 (1908).

9. For the above reasons, Bilbo Baggins may remove the matter pursuant to 28 U.S.C. § 1441.

10. Contemporaneously with this filing, Bilbo Baggins is also filing a Notice of Filing of Notice of Removal with the Clerk of the City of Alexandria Circuit Court, Virginia, as required by 28 U.S.C. § 1446(d). A true and correct copy of the Notice of Filing of Notice of Removal is attached as Exhibit 2. Promptly upon this filing, Baggins is giving written notice of the removal of this action to Plaintiff by serving him as further required by 28 U.S.C. § 1446(d).

WHEREFORE, Baggins respectfully requests that this action be removed from the City of Alexandria Circuit Court, Virginia to the United States District Court for the Eastern District of Virginia (Alexandria Division).

Dated: December 14, 2018

Respectfully submitted,

JACKSON LEWIS P.C.

/s/ Matthew F. Nieman

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Counsel for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 14 day of December, 2018, a true and accurate copy of the foregoing document was electronically filed with the Clerk's Office served using this Court's electronic filing system and was served by U.S. mail, postage prepaid, upon all parties in this case, including service to Plaintiff via overnight delivery at the following address:

Michael Star
2936 Mount Vernon Avenue
Alexandria, Virginia 22305
(703) 953-0232
Mike1star1@yahoo.com
Pro Se Plaintiff

/s/ Matthew F. Nieman

Matthew F. Nieman